

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
JACK IN THE BOX, INC.)
Licensee of Industrial/Business Pool (IG) Stations)
WPPZ408, Merced, California; WQBI851, Santa)
Cruz, California; WQBI852, Modesto, California;)
WQBI856, San Jose, California; WQBI865, San)
Luis Obispo, California; and WQBI871, Lemoore,)
California; and)
TACO BELL TB1943)
Licensee of Industrial/Business Pool (IG) Station,)
WNXJ551, Madera, California)

ORDER PROPOSING MODIFICATION

Adopted: July 6, 2007

Released: July 9, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. On March 2, 2007, the Wireless Telecommunications Bureau's Mobility Division (Division) directed the Personal Communications Industry Association (PCIA) to submit sufficient justification or suggest an alternative technical solution for the above-captioned stations with authorized areas of mobile operations of 121 kilometers, which are licensed to Jack in the Box, Inc. (Jack in the Box) and Taco Bell TB1943 (Taco Bell). On March 28, 2007, PCIA responded that the licenses should be modified to reduce the service area radii to five kilometers. For the reasons set forth below, we initiate a proceeding to modify the licenses of Jack in the Box for Stations WPPZ408, Merced, California; WQBI851, Santa Cruz, California; WQBI852, Modesto, California; WQBI856, San Jose, California; WQBI865, San Luis Obispo, California; and WQBI871, Lenmoore, California; and the license of Taco Bell for Station WNXJ551, Madera, California, by reducing the authorized areas of mobile operation to five kilometers.

2. Background. In 2005, Fresno Mobile Radio, Inc. (FMR), a licensed operator of UHF land mobile stations operating throughout the greater Fresno, California area, submitted to the Commission a letter arguing that a number of 450-470 MHz band private land mobile radio stations licensed to Jack in the Box and Taco Bell in Fresno County, California had been improperly coordinated

1 Except Station WPPZ408, for which the authorized service radius is sixty-seven kilometers.

2 See Letter dated Mar. 2, 2007 from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Don Andrew, Manager, PCIA Frequency Coordination Services, Personal Communications Industry Association (Division 2007 Letter).

3 See Letter dated Mar. 28, 2007 from Don Andrew, Manager, PCIA Frequency Coordination Services, to Melvin Spann, Federal Communications Commission, WTB, Mobility Division (PCIA Response to Division 2007 Letter).

and licensed.⁴ FMR stated that it has been incurring harmful interference from these stations, and that the manner in which the stations are licensed impedes the resolution of interference disputes among licensees.

3. In 2006, the Division directed PCIA to review its coordination of drive-through restaurant operations for specific applicants, and indicate whether, in light of the concerns raised by FMR, any of the licenses should be modified.⁵ On January 15, 2007, PCIA responded that a service area radius of five kilometers was appropriate, unless the applicant demonstrated a need for a larger service area.⁶ On March 2, 2007, the Division directed PCIA to provide a revised analysis of the appropriate service area for the applications submitted by Jack in the Box and Taco Bell.⁷ On March 28, 2007, PCIA responded that it had discussed reducing the above-captioned stations' authorized service areas to five kilometers with the licensees' contact representatives, who concurred in the recommendation.⁸

5. *Discussion.* Based on the information before us, we believe that the above-captioned licenses should be modified to reduce the authorized areas of mobile operation to five kilometers. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.⁹ Section 316(a)(1) permits the Commission to modify a station license if the action will promote public interest, convenience, and necessity.¹⁰ Thus, based on the record before us, we conclude that it is in the public interest to modify Jack in the Box's licenses for Stations WPPZ408, WQBI851, WQBI852, WQBI856, WQBI865, and WQBI871, and Taco Bell's license for Station WNXJ551, by reducing the mobile service area radius to five kilometers. We note that so reducing the service areas of mobile operation should not unduly disrupt the licensees' operations, given that the range of movement for restaurant employees wearing mobile headsets generally is limited to the restaurant's premises.

6. In accordance with Section 1.87(a) of the Commission's Rules,¹¹ we will not issue a modification order until Jack in the Box and Taco Bell have received notice of our proposed action and have had an opportunity to file a protest. To protest the modification, Jack in the Box and Taco Bell must, within thirty days of the release date of this *Order Proposing Modification*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be mailed to the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Washington, DC 20554, Attn: Mel Spann.¹² If no protest is filed, Jack in the Box and Taco

⁴ See Letter dated Apr. 29, 2005 from Robert Schwaninger, Jr., counsel for Fresno Mobile Radio, Inc., to Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau; Ed Thomas, Chief, Office of Engineering and Technology; and David Solomon, Chief, Enforcement Bureau.

⁵ See Letter dated Dec. 12, 2006 from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Don Andrew, Frequency Coordination Department, Personal Communications Industry Association.

⁶ See Letter dated Jan. 15, 2007 from Don Andrew, Manager, PCIA Frequency Coordination Services, to Melvin Spann, Federal Communications Commission, WTB, Mobility Division; see also Amendment of Part 90 of the Commission's Rules and Policies for Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450-470 MHz Band, *Report and Order*, WT Docket No. 01-146, 18 FCC Rcd 3948, 3956 ¶ 17, 3965 ¶ 39 (2003) (noting that "coordinate data for fixed stations aid the frequency coordination process," but permitting licensing of fixed stations as mobile units on the condition that they not be licensed for wide-area operations).

⁷ Division 2007 Letter at 2.

⁸ PCIA Response to Division 2007 Letter at 2.

⁹ 47 U.S.C. § 316(a)(1).

¹⁰ *Id.*

¹¹ 47 C.F.R. § 1.87(a).

¹² The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the

Bell will have waived their right to protest the modification and will be deemed to have consented to the modification.

7. *Conclusion and Ordering Clauses.* For the reasons stated above, we propose to modify Jack in the Box's licenses for Stations WPPZ408, WQBI851, WQBI852, WQBI856, WQBI865, and WQBI871, and Taco Bell's license for Station WNXJ551, by reducing the mobile service area to five kilometers.

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of Commission's Rules, 47 C.F.R. § 1.41, the request for relief and advisory opinion submitted by Fresno Mobile Radio on April 29, 2005 IS GRANTED to the extent indicated above.

9. IT IS FURTHER ORDERED that IT IS PROPOSED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of Commission's Rules, 47 C.F.R. § 1.87, that the licenses for Industrial/Business Pool Stations WPPZ408, WQBI851, WQBI852, WQBI856, WQBI865, and WQBI871 held by Jack in the Box, Inc., and the license for Industrial/Business Pool Station WNXJ551 held by Taco Bell TB1943, BE MODIFIED by reducing the authorized mobile service area to five kilometers.

10. IT IS FURTHER ORDERED that this *Order Proposing Modification* SHALL BE SENT by certified mail, return receipt requested, to Jack in the Box, Inc., Attn: Equipment Purchasing, 9330 Balboa, San Diego, California 92123; Jack in the Box, Attn: Kenneth Devoe, 1898 Bellevue Road, Atwater, California, 95301; and Taco Bell TB1943, 14232 Newport Ave, Tustin, California 92780-5104.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATION COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

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Commission's Secretary are accepted only at our new location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service, Express Mail, and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).